

REMARKS

Claims 1-5 and 8-19 are currently pending. Claims 1, 3, 5, 8, 11, 12, 16 and 18 have been amended. Claim 19 has been added. Claims 6 and 7 has been canceled. Applicant requests reconsideration of the application in light of the following remarks.

Telephone Interview

Applicant's attorney wishes to thank the Examiner and his Supervisor for their courtesy and time during a telephone interview that was held on October 23, 2008. The Examiner's comments and insight were very helpful in preparing this response. In particular, independent claims 1, 3 and 12 were discussed as well as dependent claims 7 and 16 Biochips implanted in the person, at least two different types of medical treating devices and the type of airbag were discussed. It is hoped that the comments below reflect the spirit of the interview.

Request to Admit the Amendment

Applicant believes that the foregoing amendment complies with the Examiner's requirement of form and further believes that this amendment presents the rejected claims in better form for appeal. Pursuant to 37 C.F.R. § 1.116(a), Applicant requests the Examiner admit the amendment. However, even if the Examiner decides not to admit the amendment under 37 C.F.R. § 1.116(a), Applicant respectfully requests the Examiner admit the amendment pursuant to 37 C.F.R. § 1.116(b). The foregoing amendment is necessary to sufficiently define the invention described in claims 1-5 and 8-19. Upon these good and sufficient reasons for why the amendment is necessary and was not earlier presented, Applicant requests the Examiner admit the amendment pursuant to either 37 C.F.R. § 1.116(a) or 37 C.F.R. § 1.116(b).

Rejections under 35 U.S.C. §112

Claim 16 stands rejected by the Examiner under 35 U.S.C. 112. In accordance with this rejection, the claim has been amended to comply with the Examiner's suggestions and is now believed to conform with Section 112.

Claim 16 has been amended to correct an obvious typographical error. The term “treating” has been substituted for “testing.” The language “first medical testing device” and “second medical testing device” in dependent claim 16 obviously refers to “first medical treating device” and “second medical treating device” in independent claim 12 from which claim 16 depends. Further, the terms “first medical testing device” and “second medical testing device” cannot be found in the specification, as originally filed. It is clearly not an issue of insufficient antecedent basis, but merely a typographical error. It is clear from a reading of the specification as a whole that Applicant was referring to the “first medical treating device” and the “second medical treating device.”

Applicant respectfully requests that the rejection of claim 16 under 35 U.S.C. § 112 be withdrawn.

Rejections under 35 U.S.C. §103

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the cited prior art reference must teach or suggest all of the claim limitations. Furthermore, the suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based upon the Applicant's disclosure. A failure to meet any one of these criteria is a failure to establish a *prima facie* case of obviousness. MPEP §2143.

Claims

Claims 1-5 and 7-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Shusterman (U.S. Patent Publication Number 2003/0023146, hereinafter “Shusterman”), in light of Davidson (U.S. Patent Publication Number 2004/0003455, hereinafter “Davidson”). Applicant respectfully traverses this rejection and request reconsideration of the claims.

Independent claim 1 (currently amended) now recites “the step of using at least two different types of medical treating devices.” Support for this amendment can be found in dependent claim 16. As the Examiner correctly pointed out, Shusterman does not disclose using medical treating devices for applying medical treatments to the user. Davidson fails to overcome the deficiencies of the primary reference, Shusterman. Davidson only discloses inflatable elements. Independent claim 12 (currently amended) also now recites “wherein the first and second medical treating devices are of different types of medical treating devices.” Support for this amendment can be found in dependent claim 16.

It is noted that in Shusterman paragraph [0083] the system includes sensors to determine when a person has **fallen**. The sensors do not determine whether a person is going to fall or is falling and clearly does not apply medical treatment. The wearable inflatable system of Davidson only adjusts the trajectory of a falling body. Shusterman and Davidson are clearly not combinable as the sensors in Shusterman detect only when a person has fallen whereas the sensors in Davidson sample movement, i.e. falling.

Furthermore, independent claim 3 (currently amended) recites “wherein the airbags are of the type to correct the posture of the user, to fix a broken bone in position, to stop the bleeding of blood, to apply cardio-pulmonary resuscitation or abdominal thrust (Heimlich maneuver) to the user.” Support for the amendment can be found in dependent claim 7, now canceled. None of the recited types of airbags are described in Davidson. Davidson is directed to only changing the orientation of a falling body creating a more proper falling position, particularly in paragraphs [0015] to [0017], as referred to by the Examiner. The types of airbags recited in

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independent claim 3 are neither inherent nor obvious to one of ordinary skill in the art in light of Davidson.

New dependent claim 19 recites “[t]he method as claimed in claim 1 comprising the step of using biochips implanted in the person” and is therefore not made obvious by Shusterman and/or Davidson.

Furthermore, if an independent claim, such as claims 1, 3 and 12, is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is also nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Applicant respectfully asserts, based on the arguments provided *supra*, that claims 2, 4, 5, 8-11 and 13-19 are nonobvious.

Applicant respectfully requests that the obviousness rejections of claims 1-5 and 8-18 be withdrawn.

Regarding Doctrine of Equivalents

Applicant hereby declares that any amendments herein that are not specifically made for the purpose of patentability are made for other purposes, such as clarification, and that no such changes shall be construed as limiting the scope of the claims or the application of the Doctrine of Equivalents.

CONCLUSION

Applicant respectfully requests reconsideration of this application in view of the remarks and arguments provided above. Applicant believes that the cited references do not make obvious Applicant's claimed invention. Because of this, Applicant respectfully requests a timely Notice of Allowance to be issued for this case.

If any fees, including extension of time and new claim fees, are due as a result of this response, please charge Deposit Account No. 19-0513. This authorization is intended to act as a constructive petition for an extension of time, should an extension of time be needed as a result of this response.

Respectfully submitted,

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